

## **Contempt of Court Benchbook Checklists**

**CHECKLIST 1: Summary Punishment of Direct Contempt of Court**

**CHECKLIST 2: Conducting Civil Contempt Proceedings**

**CHECKLIST 3: Conducting Criminal Contempt Proceedings**

## Checklist 1: Summary Punishment of Direct Contempt of Court

*When all of the facts necessary to establish contempt of court are within the personal knowledge of the judge, he or she may punish it summarily. See §§2.4 and 3.3.*

*In most cases, the judge who witnessed the contumacious conduct may conduct the summary proceedings. If the proceedings are deferred, another judge must conduct the contempt proceedings. See §3.14.*

- ☐ 1. Determine whether summary proceedings are appropriate. See §§2.4 and 3.3.
    - ☐ the misconduct occurred in the judge's "immediate view and presence."
    - ☐ immediate corrective action is necessary to restore order and maintain the dignity and authority of the court.
  - Note:** If contempt proceedings are deferred, the contemnor is entitled to all of the procedural protections afforded during civil or criminal indirect contempt proceedings. See §3.4 and Checklists 2 and 3.
  - ☐ 2. Determine whether the misconduct constitutes civil or criminal contempt of court. See §§2.1-2.3.
  - ☐ 3. If necessary, excuse the jury. See §§5.2(C) and 5.13(E).
  - ☐ 4. Inform the contemnor that he or she is being charged with contempt of court.
    - ☐ describe in detail the misconduct.
    - ☐ state whether the contempt is civil or criminal.
    - ☐ allow the contemnor an opportunity to orally answer the charge.
  - ☐ 5. State your factual findings and conclusions of law on the record. Include the following:
    - ☐ facts that occurred in the immediate view and presence of the court and that constitute contempt.
    - ☐ whether the contempt was civil or criminal.
    - ☐ a conclusion as to how the contumacious conduct impaired the authority or impeded the functioning of the court.
    - ☐ the sanctions imposed.
    - ☐ the reasons for imposing the sanctions.
- See §4.6.
- ☐ 6. Immediately impose sanctions. See §§4.1-4.3.

### **For civil contempt:**

- ☐ conditional jail sentence.
- ☐ fine of not more than \$250.00.
- ☐ costs and expenses of the proceedings.
- ☐ damages to injured party, including attorney fees.

### **For criminal contempt:**

- ☐ fixed jail sentence of up to 30 days.
- ☐ fine of not more than \$250.00.
- ☐ costs and expenses of the proceedings.
- ☐ damages to injured party, including attorney fees.

- ☐ 7. Sign and enter an order adjudging the contemnor guilty of contempt. In cases of civil contempt, the order of commitment must specify that the jail term must end when the person performs the required act or duty, or no longer has the power to perform the act or duty, and pays the fine, costs, and expenses of the proceeding. See §4.6.

## Checklist 2: Conducting Civil Contempt Proceedings

*This checklist is appropriate for use in a civil contempt proceeding under MCL 600.1701 et seq.; MSA 27A.1701 et seq., and MCR 3.606. Different rules may apply in other cases, such as a contempt proceeding for nonsupport. See §§3.6(A), 3.10, 3.11, 4.4, and Chapter 5.*

*In most cases, the judge who presided over the case that gave rise to the contempt charge may conduct the contempt proceedings. See §3.14. There is no right to jury trial. See §3.15.*

- ☐ 1. Determine that the affidavit accompanying the ex parte motion:
  - ☐ states with specificity factual allegations that will support a finding of contempt.
  - ☐ contains the required verification by a person with personal knowledge of the facts alleged.
- Note:** In an appropriate case, the court may take judicial notice of its own records when initiating proceedings. See §3.8(B).
- ☐ 2. Before issuing an order to show cause or bench warrant, determine that the alleged conduct constitutes civil contempt. See §§2.1-2.3, 2.6(D), and 3.8(A).
- ☐ 3. Conduct a pretrial hearing.
  - ☐ Determine that the file contains a motion, affidavit, proof of service showing personal service, and an order to show cause or bench warrant. See §§3.9-3.11.
  - ☐ Inform the alleged contemnor of the charges.
  - ☐ Inform the alleged contemnor that the charge must be proven by a preponderance of the evidence, or that evidence of the alleged contempt must be “clear and unequivocal.” See §§2.2(D) and 3.2(B).
  - ☐ Inform the alleged contemnor of the possible sanctions. See §4.2(A).
  - ☐ Inform the alleged contemnor that if he or she is indigent, the court may not jail the alleged contemnor unless counsel has been appointed or waived. Appoint counsel if required. See §§3.7 and 5.9(B).
  - ☐ Ask the alleged contemnor how he or she wishes to plead.
  - ☐ Set date for trial if necessary. The alleged contemnor must be given a reasonable opportunity to prepare a defense or explanation. See §3.2(A).
  - ☐ Set bond if the alleged contemnor was arrested on a bench warrant. See §3.13.
- ☐ 4. Conduct a nonjury civil trial at which the following procedures apply:
  - ☐ The alleged contemnor is given an opportunity to examine opposing witnesses and produce witnesses. See §3.2.
  - ☐ The Michigan Rules of Evidence apply. See §3.16.
  - ☐ The contempt is proven by a preponderance of the evidence, or by “clear and unequivocal” evidence. See §§2.2(D) and 3.2(B).
- ☐ 5. State your factual findings and conclusions of law on the record or in a separate written opinion. Include the following:
  - ☐ facts that constitute contempt.
  - ☐ the standard of proof applied.
  - ☐ a conclusion as to how the contumacious conduct impaired the authority or impeded the functioning of the court.
  - ☐ the sanctions imposed.
  - ☐ the reasons for imposing the sanctions.

See §4.6.

- ☐ 6. If the alleged contemnor is found guilty, impose sanctions. See §§4.1-4.4.
  - ☐ conditional jail sentence.
  - ☐ fine of not more than \$250.00.
  - ☐ costs and expenses of the proceedings.
  - ☐ damages to injured party, including attorney fees.
- ☐ 7. Sign and enter an order adjudging the contemnor guilty of civil contempt. The order of commitment must specify that the jail term must end when the person performs the required act or duty, or no longer has the power to perform the act or duty, and pays the fine, costs, and expenses of the proceeding. See §4.6.

## Checklist 3: Conducting Criminal Contempt Proceedings

*This checklist is appropriate for use in a criminal contempt proceeding under MCL 600.1701 et seq.; MSA 27A.1701 et seq., and MCR 3.606. Different rules may apply in other cases, such as a contempt proceeding on an alleged violation of a personal protection order. See §§3.6(A), 3.10, 3.11, 4.4, and Chapter 5.*

*In most cases, the judge who presided over the case that gave rise to the contempt charge may conduct the contempt proceedings. See §3.14. Unless the possible penalty exceeds six months' incarceration, there is no right to jury trial. See §3.15.*

- ☐ 1. Appoint the prosecutor. If the prosecutor declines to handle the case, a disinterested private attorney may be appointed as special prosecutor. See §3.6(A)-(B).
- ☐ 2. Determine that the affidavit accompanying the ex parte motion:
  - ☐ states with specificity factual allegations that will support a finding of contempt.
  - ☐ contains the required verification by a person with personal knowledge of the facts alleged.

**Note:** In an appropriate case, the court make take judicial notice of its own records when initiating proceedings. See §3.8(B).

- ☐ 3. Before issuing an order to show cause or bench warrant, determine that the alleged conduct constitutes criminal contempt. The order to show cause or bench warrant must inform the defendant that he or she is charged with criminal contempt. See §§2.1-2.3, 2.6(C), and 3.8(A).
- ☐ 4. Conduct a pretrial hearing.
  - ☐ Determine that the file contains a motion, affidavit, proof of service showing personal service, and an order to show cause or bench warrant. See §§3.9-3.11.
  - ☐ Inform the defendant of the charges.
  - ☐ Inform the defendant that the alleged contempt must be proven “beyond a reasonable doubt.” See §§2.2(C) and 3.2(B).
  - ☐ Inform defendant of the possible sanctions. See §4.2(B).
  - ☐ Inform defendant that if he or she is indigent, the court may not jail respondent unless counsel has been appointed or waived. Appoint counsel if required. See §§3.7 and 5.9(B).
  - ☐ Ask defendant how he or she wishes to plead.
  - ☐ Set date for trial if necessary. Defendant must be given a reasonable opportunity to prepare a defense. See §3.2(A).
  - ☐ Set bond if defendant was arrested on a bench warrant. See §3.13.
- ☐ 5. Conduct a nonjury criminal trial at which the following procedures apply:
  - ☐ Defendant is given an opportunity to examine opposing witnesses and produce witnesses. See §3.2.
  - ☐ The Michigan Rules of Evidence apply. See §3.16.
  - ☐ The privilege against self-incrimination applies. See §3.2(B).
  - ☐ The prosecutor or special prosecutor proves “beyond a reasonable doubt” that defendant engaged in a wilful disregard or disobedience of the authority or orders of the court. See §§2.2(C) and 3.2(B).

- ☐ 6. State your factual findings and conclusions of law on the record or in a separate written opinion. Include the following:
  - ☐ facts that constitute contempt.
  - ☐ a finding that defendant is guilty of criminal contempt “beyond a reasonable doubt.”
  - ☐ a conclusion as to how the contumacious conduct impaired the authority or impeded the functioning of the court.
  - ☐ the sanctions imposed.
  - ☐ the reasons for imposing the sanctions.

See §4.6.

- ☐ 7. If defendant is found guilty, impose sanctions. See §§4.1-4.4.
  - ☐ fixed jail sentence of up to 30 days.
  - ☐ fine of not more than \$250.00.
  - ☐ damages to injured party, including attorney fees.
- ☐ 8. Sign and enter an order adjudging the contemnor guilty of criminal contempt. See §4.6.